

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PEATH O'GRADY NATHANIEL	:	CIVIL ACTION
	:	
v.	:	
	:	
WILLIAM H. RYAN, JR.	:	NO. 11-2346

ORDER

AND NOW, this 20th day of April, 2012, upon consideration of Peath O'Grady Nathaniel's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (docket entry # 1 in the present action, as well as docket entry # 1 in Civ. No. 11-3798), respondent William H. Ryan, Jr.'s response thereto (docket entry # 8), and after careful and independent review of the Report and Recommendation of United States Magistrate Judge Jacob P. Hart (docket entry # 12), to which no party filed objections within the fourteen-day period that Local R. Civ. P. 72.1 IV(b) prescribes, and the Court agreeing with Judge Hart's conclusion that we lack subject-matter jurisdiction to entertain Nathaniel's petition because (1) "he had completed his sentence and was not even in the country when he filed, [so that] he does not satisfy the 'in custody' requirement," and (2) the petition is time-barred, inasmuch as (i) Nathaniel "did not file this petition until April 1, 2011, more than a year after the federal limitations period had ended," (ii) the federal limitation period provided for in 28

U.S.C. § 2244(d)(1)(C) is not made applicable here by Padilla v. Kentucky, 130 S. Ct. 1473 (2010), since as our Court of Appeals has "found that the rule in Padilla is not new, but rather it is a novel application of an existing rule," and (iii) in any event, Nathaniel filed his petition more than a year -- albeit by only one day -- after Padilla was decided, it is hereby ORDERED that:

1. Judge Hart's Report and Recommendation (docket entry # 12) is APPROVED and ADOPTED;
2. Nathaniel's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (docket entry # 1) is DENIED;
3. Nathaniel having failed to make a substantial showing of the denial of a constitutional right, we decline to issue a certificate of appealability; and
4. The Clerk of Court shall statistically CLOSE this case.

BY THE COURT:

/s/ Stewart Dalzell, J.